

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL SPHAR,

Plaintiff,

v.

**AON CONSULTING, INC., BMC
SOFTWARE, INC., and HEWITT
ASSOCIATES LLC,**

Defendants.

) FILED: JUNE 18, 2008
) 08CV3489
) JUDGE DER-YEGHIAYAN
) MAGISTRATE JUDGE BROWN
)
)
) PH
)
)
)
) **JURY DEMANDED**

COMPLAINT

NOW COMES Plaintiff, MICHAEL SPHAR, by and through his attorneys, Jonathan C. Goldman and Arthur R. Ehrlich of Goldman & Ehrlich, and as his complaint against the Defendants, AON CONSULTING, INC. ("AON"), BMC SOFTWARE, INC., ("BMC Software"), and HEWITT ASSOCIATES LLC, ("Hewitt"), Plaintiff states and alleges as follows:

BACKGROUND AND JURISDICTION

1. This is a cause of action alleging a violation of the Employment Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 *et seq.* as a result of Defendants' failure to abide by the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"), 29 U.S.C. § 1161, *et seq.*

2. Plaintiff MICHAEL SPHAR is a resident of Cook County, Illinois.

3. Defendant AON CONSULTING, INC. is a New Jersey Corporation doing business in Chicago, Illinois.

4. Defendant BMC Software, Inc. is a Delaware Corporation with contacts in Chicago, Illinois.

5. Defendant HEWITT ASSOCIATES LLC, is an Illinois limited liability corporation doing business in Lincolnshire, Illinois.

LAW OFFICES
GOLDMAN & EHRLICH
19 SOUTH LA SALLE STREET
SUITE 1500
CHICAGO, ILLINOIS 60603
(312)332-6733

ARDC # 06210828

6. This court has jurisdiction pursuant to ERISA, 29 U.S.C. § 1132 *et seq.*

7. Venue is proper in the Northern District of Illinois because the acts alleged occurred herein.

8. Plaintiff was employed by BMC Software for approximately eleven years. On October 29, 2007, his employment was terminated as a result of a reduction in force. During his employment with BMC Software, Plaintiff was enrolled in their Welfare Plan, which was administered by AON.

9. Upon information and belief, AON was BMC Software's Welfare Plan administrator until December 31, 2007 at which time HEWITT became BMC's Welfare Plan administrator.

10. Pursuant to COBRA, an employer is required to notify its group health plan administrator of a qualifying event (such as a termination) within 30 days.

11. COBRA also requires the plan administrator to notify the terminated employee within fourteen days of the right to elect continued health insurance coverage and to allow the terminated employee at least sixty (60) days to decide whether to elect continuation of their group health plan coverage.

12. At the time of his discharge, Plaintiff was provided with a packet indicating that he would be receiving information about COBRA within 31 days. To date, Plaintiff has not been provided with documentation notifying him how to elect to continue his medical insurance coverage.

13. When Plaintiff failed to receive COBRA notice after approximately thirty days, he contacted AON and they agreed to send out another notice. Plaintiff never received it. In early January 2008, he received a letter indicating that his insurance was cancelled since he had not elected to continue his health insurance benefits. He was not aware that he had the right to appeal

that decision until early February 2008. At approximately the same time, Plaintiff had some serious medical issues that intermittently prevented him from taking action on the denial of benefits until February 18, 2008. At that time, Plaintiff spoke with a representative at AON, who informed him that AON was no longer the benefits administrator and that he would have to contact the new benefits administrator, HEWITT. He contacted HEWITT who told him that it would first be necessary for him to have AON reinstate his benefits and then to contact HEWITT to have them continued. AON told him to he should file a written appeal, which he did. On February 21, 2008, Plaintiff received a brief telephone call from a representative at AON who simply told him that his appeal was denied. It was implied by the AON representative that Plaintiff should again contact HEWITT, which he did. HEWITT reported that they were investigating the matter. Subsequently, Plaintiff suffered a relapse of his medical condition. Between February 26, 2008 and March 8, 2008, Plaintiff received a voice mail message from HEWITT indicating that his appeal had been denied. In subsequent conversations, Defendants reiterated that the appeal had been denied, but never sent any correspondence confirming their decision. Finally, Plaintiff asked AON to provide whatever evidence they had that they sent notice to Plaintiff, but it refused. Plaintiff has exhausted all internal avenues of appeal prior to filing this suit.

14. As a result of not receiving COBRA notice, Plaintiff was unable to continue the health insurance benefits that he had while working for BMC Software, Inc and was required to incur significant costs for medical services.

15. In addition, Defendants are liable for penalties as a result of their failure to provide Plaintiff with notice pursuant to 29 U.S.C. § 1132(c)(1).

16. Plaintiff is also entitled to attorneys fees and his costs of suit pursuant to 29 U.S.C. § 1132(g).

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants and award Plaintiff the following relief:

- A. COBRA benefits retroactive to November 1, 2007;
- B. Payment of all medical bills that Plaintiff has incurred since being discharged in the same manner as his health insurance benefit plan would have done;
- C. Penalties for failure to provide notice to Plaintiff at the rate of \$100 per day;
- D. Plaintiff's costs of suit and attorneys fees; and
- E. Any other and further relief as this Court deems just and proper.

/s/ Jonathan C. Goldman

Jonathan C. Goldman of GOLDMAN & EHRLICH,
as Attorneys for MICHAEL SPHAR

LAW OFFICES
GOLDMAN & EHRLICH
19 SOUTH LA SALLE STREET
SUITE 1500
CHICAGO, ILLINOIS 60603
(312)332-6733

ARDC # 06210828